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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,415	06/18/2001	Uwe Sydon	99 P 7358 US 01	3184

7590 03/08/2004

Siemens Corporation  
Intellectual Property Department  
186 Wood Avenue South  
Iselin, NJ 08830

EXAMINER
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CORRIELUS, JEAN B

ART UNIT	PAPER NUMBER
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2631

22

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/884,415

Applicant(s)

SYDON ET AL.

Examiner

Jean B Corrielus

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 13 and 16-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28-33 is/are allowed.
- 6) ☒ Claim(s) 13, 16, 17, 19, 21-24 and 26 is/are rejected.
- 7) ☒ Claim(s) 18, 20, 25 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Response to Arguments***

1. In view of the Appeal Brief filed on 2/2/04, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 13, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Chang et al US patent No. 6,169,907.

Chang et al discloses a method and apparatus having the step of providing communication between a first component 102 and a second component 114; transmitting an initial signal from the first component 102 to the second component 114 at a first power level see col. 4, lines 9-10; determining an initial signal quality at the second component 114 and determining a communication strength for the initial signal at the second component 114 see col. 4, lines 9-14 ; transmitting from the second component 114 to the first component 102 a request for the first component 102 to transmit a subsequent signal at a second power level less than the first power level, when the initial quality is higher than a predetermined signal quality and the communication strength is greater than a specified range see col. 4, lines 26-44 and col. 5, lines 7-29.

As per claims 16 and 17, the first and second component comprises, vice and versa, a mobile and base stations , respectively. See col. 8, lines 59-60.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang et al in view of Larsson et al US patent no. 5,241,690 and further of Gilhousen et al US patent No. 5,385,486.

As applied to claim 13 above Chang et al discloses every feature of the claimed invention. However, Chang et al does not explicitly teach the further limitations of determining a power of the initial signal at the second component, the power level comprising one of a maximum and at least one non-maximum; transmitting from the second component to the first component a request for the first component to transmit a subsequent signal at the maximum power level when the initial signal quality is lower than the predetermined signal quality and the first power level is non-maximum power level. In the same field of endeavor, Larsson et al teaches the further limitations of transmitting from the second component to the first component a request for the first component to transmit a subsequent signal at the maximum power level when the initial signal quality is lower than the predetermined signal quality see col. 6, lines 63-65, col. 7, lines 25-31 and col. 8, lines 40-42. Given that fact, it would have been obvious to one skill in the art at the time of the invention to incorporate such a teaching in Chang et al in order to improve bit error rate. Furthermore, Gilhousen further teaches a

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measurement circuitry 60 adapted to measured the power level of an initial signal, the power level includes inherently a maximum or non-maximum. It would have been obvious to one skill in the art at the time of the invention to include such a teaching in Chang et al and Larsson in order to determined whether or not the transmit power is within acceptable range so as to provide proper compensation.

7. Claims 21, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larsson et al US patent no. 5,241,690 in view of Gilhousen et al US patent No. 5,385,486.

Larsson et al teaches an apparatus comprising limitations a first component M1 and a second component B8 for providing wireless communication with the first component and for transmitting an initial signal to the first component Larsson further teaches an element 1 corresponding to the claimed error detector for the first component, element 1 (error detector) the first component operable to the second component requesting the second to transmit a subsequent signal at the maximum power level when the initial signal quality is lower than the predetermined signal quality see col. 6, lines 63-65, col. 7, lines 25-31 and col. 8, lines 40-42. given that fact, it would have been obvious to one skill in the art at the time of the invention to incorporate such a teaching in Chang et al in order to improve bit error rate. Furthermore, Gilhousen further teaches a measurement circuitry 60 adapted to measured the power level of an initial signal, the power level includes inherently a maximum or non-maximum. It would have been obvious to one skill in the art at the time of the invention to include

such a teaching in Larsson in order to determined whether or not the transmit power is within acceptable range so as to provide proper compensation.

As per claims 22 and 23 the first and second component comprises, vice and versa, a mobile and base stations , respectively. See col. 8, lines 59-60.

8. Claims 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larsson et al US patent no. 5,241,690 in view of Gilhousen et al US patent No. 5,385,486.

As applied to claim 21, Larsson and Gilhousen disclose the invention substantially as claimed but does not explicitly teach the further limitations determining a communication strength for the initial signal at the second component ; transmitting from the second component to the first component a request for the first component to transmit a subsequent signal at a second power level less than the first power level, when the initial quality is higher than a predetermined signal quality and the communication strength is greater than a specified range. In the same field of endeavor, Chang et al discloses a method and apparatus having the step of providing communication between a first component 102 and a second component 114; transmitting an initial signal from the first component 102 to the second component 114 at a first power level see col. 4, lines 9-10; determining an initial signal quality at the second component 114 and determining a communication strength for the initial signal at the second component 114 see col. 4, lines 9-14 ; transmitting from the second component 114 to the first component 102 a request for the first component 102 to

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transmit a subsequent signal at a second power level less than the first power level, when the initial quality is higher than a predetermined signal quality and the communication strength is greater than a specified range see col. 4, lines 26-44 and col. 5, lines 7-29. given that fact, it would have been obvious to one skill in the art at the time of the invention to include such a teaching in Larsson and Gilhousen in order to minimize power consumption.

As per claim 24, note at col. 5, line 52, Chang et al further teaches that the initial signal quality include a successive bit error rate signal. Given that fact, it would have been obvious to one skill in the art to incorporate such a teaching in Larsson and Gilhousen so as to accurately determine the state of the communication channel between the base station and the mobile station.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 13, 16, 17, 19, 21-24 and 26 have been considered but are moot in view of the new ground(s) of rejection.

### ***Allowable Subject Matter***

10. Claims 28-32 are allowed.

11. Claims 18, 20, 25 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. **Any response to this action should be mailed to:**



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Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

(703) 872-9314


(for informal or draft communications, please label "PROPOSED"  
or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,  
Arlington, VA., Sixth Floor (Receptionist).

13. Any inquiry concerning this communication or earlier communications  
from  
the examiner should be directed to Jean B. Corrielus whose telephone number is (703)  
305-4023. The examiner can normally be reached on Monday-Thursday from 7:00 A.M.  
to 5:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the  
examiner's supervisor, Mohammad Ghayour, can be reached on (703) 306-3034.

Any inquiry of a general nature or relating to the status of this application or  
proceeding should be directed to the Group receptionist whose telephone  
number is (703) 305-3800.

  
Jean B. Corrielus  
Primary Examiner  
TC-2600

3/4/04